

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
THE STATE OF MONTANA

In the matter of the adoption New)	NOTICE OF ADOPTION,
Rule I through XI, the amendment of)	AMENDMENT, AND REPEAL
ARM 37.88.206, 37.88.306,)	
37.88.606, 37.89.103, 37.89.106,)	
37.89.114, 37.89.115, 37.89.118,)	
37.89.119, and 37.89.131, and the)	
repeal of 37.86.112 and 37.89.135)	
pertaining to the mental health)	
services plan)	

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-447 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1424 of the 2008 Montana Administrative Register, Issue Number 13.

2. The department has adopted New Rule II (37.87.303), Rule IV (37.87.1513), Rule V (37.87.1703), Rule VII (37.87.1903), Rule VIII (37.87.1915), and Rule IX (37.87.1733) as proposed. The department has amended ARM 37.88.206, 37.88.306, 37.88.606, 37.89.106, 37.89.115, 37.89.118, 37.89.119, and 37.89.131 and repealed ARM 37.89.136 as proposed.

3. The department will not be repealing ARM 37.86.112 at this time.

4. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE I (37.87.102) MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) through (2) remain as proposed.

~~(3) "Covered diagnosis" services are defined in ARM 37.89.103.~~

(4) and (5) remain as proposed but are renumbered (3) and (4).

~~(6) "Inpatient psychiatric services" means psychiatric care provided in a licensed hospital, psychiatric residential treatment facility, or hospital-based residential psychiatric care.~~

(5) "Licensed health care professional" means:

(a) a licensed physician;

(b) a physician assistant-certified; or

(c) an advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

(7) and (8) remain as proposed but are renumbered (6) and (7).

~~(9) (8) "Mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker, or licensed professional counselor.~~
means one of the following practitioners:

(a) physician;

(b) licensed professional counselor;

(c) licensed psychologist;

(d) licensed clinical social worker; or

(e) advanced practice registered nurse, with a clinical specialty in psychiatric mental health nursing.

(10) remains as proposed but is renumbered (9).

(10) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license.

(11) through (14) remain as proposed.

(15) "Youth" means:

(a) remains as proposed.

(b) for MHSP, a person ~~through~~ 17 years of age and younger ~~and that~~ is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP) and meets the financial eligibility for MHSP.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE III (37.87.1503) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) An individual is eligible for covered services under the MHS plan if:

(a) the individual is a youth ~~through~~ 17 years of age and younger with a serious emotional disturbance in accordance with ARM 37.87.303;

(b) through (3)(c) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VI (37.87.1723) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER PARTICIPATION (1) through (2)(f) remain as proposed.

(3) A provider who is denied enrollment has no right to an administrative review or fair hearing as provided in ARM ~~37.5.304, et seq.~~ 37.5.113 and ARM Title 37, chapter 5, subchapter 3, or any other department rule.

(a) through (7) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE X (37.87.2103) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS (1) through (2) remain as proposed.

(3) A youth has the right to any applicable grievance processes provided in ARM 37.5.318~~(5)(a)~~ regarding a denial or termination of plan eligibility.

(4) through (9) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE XI (37.87.2203) YOUTH SYSTEM OF CARE ACCOUNT, REQUIREMENT (1) through (4)(d) remain as proposed.

(5) The services the youth receives:

(a) shall provide for the care and protection and mental, social, and physical development of the high risk youth with multiagency service needs;

(b) must be specified in the youth's integrated treatment plan; ~~and are not~~

~~(c) cannot be eligible for reimbursement from another source;~~

~~(d)~~ (d) must be identified as part of a multiagency planning process;

~~(e)~~ (e) shall maintain the youth in a community setting or return the youth to a community setting as a priority; and

~~(f)~~ (f) shall be prior authorized by the department or its designee place high-risk youth out-of-state as a last resort.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (10) remain as proposed.

(11) "Mental health professional" means one of the following practitioners:

(a) physician;

(b) licensed professional counselor;

(c) licensed psychologist;

(d) licensed clinical social worker; or

(e) advanced practice registered nurse, with a clinical specialty in psychiatric mental health nursing.

(11) through (17) remain as proposed but are renumbered (12) through (18).

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) Authorized medically necessary mental health services for a covered diagnosis are covered under the plan for members, except as provided in this subchapter include:

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health professionals as defined in ARM 37.89.103 ~~37.106.1902~~ or ~~licensed and enrolled health care professionals as defined in ARM 37.106.1902;~~

(b) through (10)(a)(ii) remain as proposed.

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: We are concerned about the definition for Mental Health Service Plan (MHSP) for youth as a person through 17 years and not eligible for Medicaid or CHIP. We oppose any language that reduces the age of eligibility.

RESPONSE #1: Mental Health Service Plan (MHSP) for individuals age 18 and older are covered under the adult MHSP program. Under the current program, most 18 year olds are receiving services under the adult MHSP program. For calendar year 2008 to date, there were two applications for MHSP processed through the CHIP program. Both individuals met clinical eligibility criteria under the adult MHSP program. For recipients and providers, it was confusing to have 18 year olds included in both the youth and adult MHSP programs. The proposed rule clarifies that individuals age 18 and older are covered by the adult MHSP program.

COMMENT # 2: I suggest the department add an "advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing" under the definition of "mental health professional" in New Rule I Mental Health for Youth with Serious Emotional Disturbance (SED), Definitions.

RESPONSE # 2: The department agrees and has added this language to the definition of "mental health professional". To provide additional clarity, the department also added two definitions:

(5) "Licensed health care professional" means:

(a) a licensed physician;

(b) a physician assistant-certified; or

(c) an advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

(10) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license.

COMMENT #3: We applaud the efforts of the department to reorganize the rules pertaining to mental health for youth into one chapter. It will be helpful in providing clarity and navigation of the regulations.

RESPONSE #3: The department thanks the commentor.

6. In the Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal of these new rules and amendments, the department inaccurately stated that the bill sponsor requirements of 2-4-302, MCA did not apply. In fact, Rule XI (37.87.2203), "Youth System of Care Account", is a rule that initially implements legislation. Therefore, the bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by regular U.S. mail on May 12, 2008.

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008.